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Paper No. 7

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**APR 2 6 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Savard et al. :  
Application No. 09/988,475 :  
Filed: November 20, 2001 :  
Title of Invention: : Decision on Petition  
MANEUVERABLE AND ADJUSTABLE :  
LAWN MOWER HAVING AN EDGING- :  
TRIMMING UNIT :

This is a decision on the petition under 37 CFR 1.137(a), filed April 16, 2004, which is being treated as a Request for Reconsideration of Petition under 37 CFR 1.137(a), to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application (under 37 CFR 1.137(a)), must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under 37 CFR 1.137", and be addressed to Petitions Attorney Derek L. Woods. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed January 15, 2003. The Notice set a statutory period for reply of three (3) months. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the above-identified application became abandoned April 16, 2003. A Notice of Abandonment was mailed on September 11, 2003.

A petition under 37 CFR 1.137(a), filed December 1, 2003, was dismissed in a Decision mailed December 17, 2003, for failing to

meet the requirements of a grantable petition under 37 CFR 1.137(a). In the December 1, 2003 petition, Applicant asserted that a timely reply was filed via facsimile transmission on April 14<sup>th</sup>, 2003. Applicant further averred receipt of confirmation of a successful transmission from the fax machine.

Applicant was advised that the reply to the Office action was not included in the petition and the reply must be submitted. Applicant was further advised if Applicant has complied with one of the three methods wherein this Office considers correspondence as being timely filed, Applicant should submit such evidence in a renewed petition.

The instant Request for Reconsideration

Applicant files the instant Request for Reconsideration and an Amendment and proposed corrected drawings putatively timely filed on April 13, 2003 via facsimile. In support of the assertion that the response to the Office action was timely filed, Applicant files a copy of the Certificate of Transmission, dated April 14, 2003, the bottom of which is written

Amendment A  
09/988,475

Applicant also provides a copy of a Certificate of Transmission, dated August 13, 2003, the bottom of which notes which is written

fax to 703 872 9326  
for application 09/988,475

8 pages    -Amendment A  
             -intro  
             -.

Finally, Applicant files a copy of a fax logbook wherein Applicant notes a line dated April 14, 2003 and containing the telephone number 1-703-872-9302. Applicant avers that the logbook proves timely transmission by facsimile of the response to the Office action.

**Petition under 37 CFR 1.137(a) for unavoidable abandonment**

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks items (1) and (3).

**Analysis**

A review of the logbook entry for the facsimile putatively sent on April 14, 2003, reveals that the facsimile telephone number is incorrect. The telephone number entered into the log is 1-703-872-9302. The correct telephone number for facsimile receipt is 703-872-9306.

Moreover, a review of the Certificate of Transmission, dated August 13, 2003 reveals that the Certificate of Transmission also contains an incorrect facsimile telephone number. The telephone number listed on the Certificate of Transmission is 703 872 9326; the telephone number for facsimile receipt is 703-872-9306.

Finally, a review of the application file reveals that neither of the facsimile transmissions was received in this Office, as neither of the putative facsimile transmissions has been located in the application file.

Conclusion

The evidence has been considered but it fails to demonstrate that the reply to the January 15, 2003 Office action was timely and properly filed by Applicant.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to show that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee, currently \$665.00 for a small entity.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to reinstate under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for reinstatement under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

By FAX: (703) 872-9306  
Attn: Office of Petitions

By hand: 2201 South Clark Place  
Customer Window  
Crystal Plaza Two, Lobby Room 1B03  
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at 703-305-0014.

  
Derek L. Woods  
Petitions Attorney  
Office of Petitions